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***Via Certified Mailing  
Return Receipt Requested***

September 7, 2015

The Garland  
Attn: James Crank, Owner  
Scott A. Mills, General Manager  
4222 Vineland Avenue  
North Hollywood, CA 91602

Rio Vista Development Company  
Attn: James Crank, Registered Agent  
4222 Vineland Avenue  
North Hollywood, CA 91602

The Marcus Corporation  
Parent Company of Marcus Hotels & Resorts  
Attn: Gregory S. Marcus, President/CEO  
100 E. Wisconsin Avenue, Suite 1900  
Milwaukee, WI 53202

**Re: Notice of Violations and Intent to File Suit Under the Clean Water Act**

Dear Mr. Crank, Mr. Mills, Mr. Marcus and Management Agents:

## **NOTICE**

The Clean Water Act § 505(b), 33 U.S.C. § 1365(b), ("CWA" or "Act") requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator with copy to the Environmental Protection Agency ("EPA") (both local and federal), and the water pollution control agency for the State in which the violations occur. If the alleged violator is an

individual or corporation, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the owner or managing agent with a copy sent to the registered agent of the corporation.

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Act, 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at The Garland hotel and restaurant facility located at 4222 Vineland Avenue in North Hollywood, California.

River Watch hereby places The Garland, Rio Vista Development Company and The Marcus Corporation, collectively referred to hereafter as "the Discharger" on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch will have cause to file suit in the Federal District Court against the Discharger due to continuing violations of "an effluent standard or limitation," permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board, Los Angeles Region, Water Quality Control Plan ("Basin Plan,") as exemplified by the Discharger's unlawful discharges of pollutants from the hotel, restaurant and event space located at 4222 Vineland Avenue in North Hollywood, California ("The Garland") into the Los Angeles River without complying with other required sections of the Act (see CWA § 301(a), 33 U.S.C. § 1311(a)).

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that *all* discharges of pollutants are prohibited with the exception of several enumerated statutory exceptions. Once such exception authorizes a discharger who has been issued a permit pursuant to the National Pollutant Discharge Elimination System ("NPDES") permitting system to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition.

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. The specific standard, limitation, or order alleged to have been violated.

River Watch has identified the discharge of pollutants from The Garland to the Los Angeles River, a water of the United States, without complying with any other section of the Act, including CWA §§ 402(a) and 402(b), 33 U.S.C. § 1342(a) and 1342(b).

2. The activity alleged to constitute a violation.

The Act provides that, absent a permit and subject to certain limitations, "the discharge of any pollutant by any person shall be unlawful." CWA § 310(a), 33 U.S.C. § 1311(a). River Watch contends the Discharger is discharging pollutants including the toxic metals barium, copper, lead, nickel, and zinc, as well as pathogens, fecal and total coliform, from The Garland to the Los Angeles River without complying with other sections of the Act.

3. The person, persons or discharger responsible for the alleged violation.

The dischargers responsible for the alleged violations are The Garland, Rio Vista Development Company and The Marcus Corporation as parent company of Marcus Hotels & Resorts, referred to in this Notice collectively as "the Discharger" as well as those other persons who may hold an ownership or operating interest in The Garland.

4. The location of the alleged violation.

The location of the various violations is the site of The Garland – 4222 Vineland Avenue, North Hollywood, California, including the waters of the Los Angeles River – a water of the United States.

5. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.

The CWA is a strict liability statute with a five-year statute of limitations. Although River Watch alleges the illegal discharges of pollutants from The Garland have been occurring for more than the statutory five-year period, the range of dates covered by this Notice is September 7, 2010 through September 7, 2015. This Notice also covers all violations that may occur after the service of this Notice up to the day of trial should this case be litigated. Each discharge from The Garland is a separate violation of the CWA. Some violations are continuous in nature, therefore each day constitutes a violation.

6. The full name, address, and telephone number of the person giving notice.

The entity giving this Notice is California River Watch, referred to herein as "River Watch." River Watch is an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The



mailing address of River Watch's southern California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043.

River Watch is dedicated to protecting, enhancing, and helping to restore the surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna; and educating the public concerning environmental issues associated with these environs. River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys.

River Watch has retained legal counsel with respect to its concerns and the issues presented in this Notice. All communications regarding the same should be directed to:

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## **BACKGROUND**

Originally built in 1972 by real estate developer Fillmore Crank for his wife, actress Beverly Garland, The Garland changed hands several times before being acquired by James Crank in 1999. Located on approximately 7 acres in North Hollywood, The Garland is presently owned by family-operated Rio Vista Development Company and managed by Marcus Hotels & Resorts, a division of The Marcus Corporation. The Garland recently underwent a \$20 million head-to-toe, multiphase redesign and renovation consisting of the updating of all guest rooms, suites and public spaces, and the addition of a new outdoor garden space for weddings and social events. In addition to the hotel rooms and suites, The Garland contains an outdoor swimming pool and Jacuzzi, sun deck, pool side bar, fire pit, on-site laundry facilities, outdoor courtyard, public space with a small water fountain, and 2,500 square feet of outdoor event space.

The Garland site abuts the Los Angeles River, a body of water approximately 51 miles long winding through southern California. Arroyo Calabasas and Bell Creek, on the western side of the San Fernando Valley, join to become the headwaters of the Los Angeles River. First flowing east, the River turns right at Griffith Park in Los Angeles and heads south past Glendale and downtown Los Angeles, crossing Lynwood and Compton, and emptying into the Pacific Ocean at Long Beach. Once fed by groundwater basins in the San Fernando Valley which bubbled up near present day Encino, the River nourished a lush

coastal plain. The River was once the habitat of grizzly bear and dense Coast Live Oak groves which provided acorns for wildlife and native Californians. Native fish species included rainbow trout, Arroyo chub, river shrimp, chinook salmon, Sacramento pikeminnow, Pacific lamprey, and the Santa Ana sucker. The main source of drinking water for a young Los Angeles until 1914, the River was straightened, deepened, moved, and otherwise rebuilt by the U.S. Army Corps of Engineers into a concrete channel following numerous damaging floods in the 1930s.

The Los Angeles River is the heart of an 871-square mile watershed encompassing the Santa Susanna Mountains to the west, the San Gabriel Mountains to the north and east, and the Santa Monica Mountains and Los Angeles coastal plain to the south. Diverse patterns of land use exist in this watershed. Forest or open space covers the upper half, while the remaining watershed is highly urbanized with commercial, industrial, or residential uses. Twenty-two lakes are found within its boundaries, in addition to a number of spreading grounds including sites at Dominguez Gap, the Headworks, Hansen Dam, Lopez Dam, and Pacoima Dam. Fed primarily by snowmelt and urban discharge, it is one of the few low-elevation perennial rivers in southern California. In times of peak flow, the Los Angeles River carries as much water as 80 million garden hoses going full blast per second out to the Pacific Ocean.

The Los Angeles River supports over 300 species of birds along the Pacific Flyway. Shorebirds such as osprey, terns, killdeer, cormorants, the California brown pelican and California least tern (both federally endangered species) are in abundance in the River's estuaries during April and then from July to October. Other species thriving along the River include great blue herons, snowy egrets, black-crowned night herons, red-winged blackbirds, American coots, and both red-tailed and red-shouldered hawks. Current species of fish include carp, largemouth bass, tilapia, green sunfish, Amazon sailfin catfish, bluegill, channel catfish, fathead minnow, crayfish, and mosquito fish. The water quality in the middle and lower portions of the basin are impaired due to runoff from dense clusters of commercial, industrial, residential, and other urban activities. Impairments include pH, ammonia, metals, coliform, trash, algae, oil, pesticides, and volatile organics.

Storm drains and swales within The Garland site are point sources from which non-stormwater is discharged. These non-stormwater discharges make their way to outfalls directly discharging to the Los Angeles River. Illegal discharges from The Garland contain barium, copper, lead, nickel and zinc as well as fecal and other coliforms. Results from recent water sampling indicate copper, lead and zinc are being discharged from The Garland at concentrations above California Toxics Rule ("CTR") limits. The CTR limit for: copper is 9 µg/l continuous, 13 µg/l maximum; lead 2.5 µg/l continuous, 65 µg/l maximum; and, zinc is 120 µg/l continuous and maximum. Water sampling from the outfalls from The Garland

to the Los Angeles River measured 582 µg/l for copper, 23.2 µg/l for lead and 1,460 µg/l for zinc. Flows were seen from these outfalls as being continuous in nature. Other metals being discharged include barium, recently measured at 175 µg/l and nickel measured at 34.1 µg/l. Coliform and fecal coliform are also discharging from The Garland measured at > 900 MPN/100ml for total coliform and 170 MPN/100ml for fecal coliform.

All of the metals detected in sampling are among 126 priority pollutants (see 40 C.F.R. § 401.15). The Los Angeles River and its main tributaries are CWA § 303(d) listed as impaired for indicator bacteria, zinc, copper, and pathogens. For waters like the Los Angeles River which have not yet met water quality standards, the addition of unpermitted loads “contribute to excursions above water quality standards” since any additional discharge makes it that much more difficult to improve water quality to levels that satisfy those water quality standards. This is especially true of discharges that are not included in the loading calculations, such as those from commercial operations on The Garland site.

The CWA’s definition of “pollutant” is extremely broad. CWA § 502(6), 33 U.S.C. § 1362(6); *see also Northern Plains Resource Council v. Fidelity Exploration and Development Company*, 325 F.3d 1155, 1162-1163 (9<sup>th</sup> Cir. 2003). There can be no dispute that the copper, lead, zinc, barium, nickel, fecal and total coliform contained in The Garland’s stormwater system are pollutants as defined under the Act. *See also Sierra Club v. Cedar Point Oil Company Inc.* 73 F. 3d 546, 566 (5<sup>th</sup> Cir. 1996) [That the definition of “pollutant” is meant to leave out very little is confirmed by the statutory definition of “pollution,” which means nothing less than the “man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” CWA § 502(19), 33 U.S.C. § 1362(19)].

Under the Act, “the term ‘point source’ means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14). The Garland’s stormwater system clearly meets this definition. *See also Northwest Env’tl Defense Ctr. v. Brown*, 640 F.3d 1063 at 1071 (9<sup>th</sup> Cir. 2011) [“Storm sewers are established point sources subject to NPDES permitting requirements...” quoting *Environmental Defense Center v. EPA*, 344 F.3d 832, 841-842 n. 8 (9<sup>th</sup> Cir. 2003)]. The Ninth Circuit has ruled that the collection, channelization and release to a water of the United States is a “discharge” under the CWA. *Committee to Save the Mokelumne v. East Bay Municipal Utility District*, 13 F.3d 305, 308-309 (9<sup>th</sup> Cir. 1993).

Multiple sources of pollution generated through activities on The Garland site such as vehicular and building maintenance, landscaping and maintenance of grounds, sewage and



garbage, make their way to The Garland's system of storm drains connected to the Los Angeles River. River Watch's ongoing investigation indicates a lack of any effective structural Best Management Practices ("BMPs") in place at The Garland to prevent maintenance waters from coming into contact with pollutant sources and/or water treatment measures to prevent contaminants from being discharged from The Garland without treatment in or around the storm drains.

Under EPA regulations, water quality standard based provisions are required in NPDES permits to protect the beneficial uses of water. 40 C.F.R. § 122.44(d). The Regional Water Quality Control Board, Los Angeles Region (RWQCB-LA) has identified beneficial uses of the waters in the region of the Los Angeles River and has established water quality standards for the Los Angeles basin. These beneficial uses include contact and non-contact recreation. Non-contact recreation use is defined as uses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible – such as picnicking, sunbathing, hiking, camping, boating, hunting, sightseeing, or aesthetic enjoyment in conjunction with those activities. Water quality considerations relevant to hiking, camping, boating, and activities related to nature studies require protection of habitats and aesthetic features.

The Basin Plan includes a narrative toxicity standard which states that all waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms. The Basin Plan includes a narrative oil and grease standard which states that waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water that cause nuisance, or otherwise adversely affect beneficial uses. The Basin Plan establishes Water Quality Objectives for toxic metals such as copper, lead and zinc.

The EPA adopted the National Toxics Rule on February 5, 1993 and the CTR on May 18, 2000. When combined with the beneficial use designations in the Basin Plan, these Rules contain water quality standards applicable to the discharges from The Garland as identified in this Notice. The State Water Resources Control Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* on April 26, 2000, containing requirements for implementation of both the National Toxics Rule and the CTR.

## **VIOLATIONS**

River Watch alleges that from September 7, 2010 through September 7, 2015 the Discharger violated the CWA by discharging pollutants from The Garland into waters of the

United States without complying with any other section of the Act, including CWA §§ 402(a) and (b), 33 U.S.C. §§ 1342(a) and (b). Each and every discharge is a separate violation of the CWA. These enumerated violations are based upon River Watch's own investigations, review of the RWQCB-LA files for The Garland, interviews with area residents, and review of other files publically available.

In addition to the above violations, this Notice is deemed to include any and all violations evidenced by the Discharger's records and monitoring data for The Garland which the Discharger has submitted (or failed to submit) to the RWQCB-LA and/or other regulatory agencies during the period September 7, 2010 through September 7, 2015. This Notice also includes any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by the Discharger to the RWQCB-LA or other regulatory agencies.

## CONCLUSION

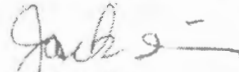
CWA §§ 505(a)(1) and (f), 33 U.S.C. §§ 1365(a)(1) and (f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. An action for injunctive relief under the CWA is authorized by CWA § 505(a), 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to CWA §§ 309(d) and 505, 33 U.S.C. §§ 1319(d), 1365 (see also 40 C.F.R. §§ 19.1-19.4). River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of the CWA to obtain the relief provided for under the law.

The violations by the Discharger as set forth in this Notice affect the health and enjoyment of members of River Watch who reside, work and recreate in the affected watershed area. River Watch's members use the Los Angeles River and its watershed for domestic water supply, agricultural water supply, recreation, photography, nature walks and the like. Their health, property rights, and use and enjoyment of this area is specifically impaired by the Discharger's violations of the CWA as described herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this Notice. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested that discussions be initiated within the next **20 days** so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.



Very truly yours,

  
Jack Silver

JS:lhbm

cc:

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